As regards damages, no evidence has been led as to what damages the plaintiffs have suffered. They have remained and are still in occupation of the premises. The gates to the premises were locked only for a short time and this took place long after they had knowledge that the owner of the premises had terminated the licence of the first defendants. In the circumstances I am not prepared to grant them any damages. In the result this action is dismissed.

Both defendants have also asked for damages in their counter-claims, but they too have led no evidence as to what damages they have suffered. As far as I am aware, the second defendants are still in occupation of the premises and are presumably paying rent to the first defendants. The second defendants have received rent from the plaintiffs up to a certain period. They are clearly entitled to rent for the period during which the rents have remained unpaid. That will be the measure of damages in the case of the second defendants.

Both defendants on their counter-claims have asked for an order that the plaintiffs do vacate the premises. As the second defendants are not altogether blameless, I do not propose to make this order on their counterclaim. The first defendants, however, are entitled to this order and I accordingly make an order that the plaintiffs do vacate the premises on or before 31st August, 1965. I also make an order that the plaintiffs do pay the second defendants by way of damages the amount of rent due up to 31st August, 1965. The plaintiffs will pay the full costs of the first defendants and the costs of the second defendants on the claim in consequence of the dismissal of the action.

Order accordingly.

Solicitors: *Mah King Hock; Allen & Gledhill; Braddell & Ramani.*

RAJA ZAM ZAM v. VAITHIYANATHAN

[O.C.J. (Raja Azlan Shah J.) July 26, 1965]

[K.L. — Civil Suit No. 702 of 1964]

Negligence — Damages — Quantum — Special and general damages — Prospective pecuniary loss.

Damages — Fracture of coccyx — Housewife — Partial disability.

The plaintiff sustained injuries in a motor car accident and claimed $30,000 for general damages. The plaintiff was a housewife with seven children. As a result of the accident she was unable to continue to do housework and had to engage servants to help her in the household duties.

Held: (1) the practice is not to specify the amount of general damages in the pleadings;

(2) in assessing general damages in such cases there are three elements to be considered (a) pain and suffering, (b) loss of enjoyments of life, and (c) prospective pecuniary loss;

(3) in the circumstances of this case the plaintiff would be awarded $18,500 as general damages.

[**Editorial Note:** See also *Tham Kwa Chin* v. *Choong Hoong Sun*, [1954] M.L.J. 161, where Spenser Wilkinson J. pointed out that it is not in accordance with the best traditions of pleading to claim any specified sum when claiming general damages and that the proper prayer is "The plaintiff claims damages".]

Cases referred to:—

(1) *British Transport Commission* v. *Gourley* [1956] A.C. 185 at p. 206.

(2) *Roach* v. *Yates* [1937] 3 All E.R. 442 at p. 444.

(3) *Shearman* v. *Folland* [1950] 1 All E.R. 976.

(4) *Brockbank* v. *Whitehaven Junction Railway Company* 158 E.R. 706.

CIVIL SUIT.

Hee Keng Loon for the plaintiff.

Tara Singh Sidhu for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: On 19th October,1962 while the plaintiff was walking on her correct side of the road she was knocked down by the defendant who was then driving his motor-car. Liability is admitted, and therefore the sole issue before the court is the quantum of damages. She claims general damages for injuries sustained in the sum of $30,000. Special damages were not claimed.

This is a peculiar way of claiming general damages. It is not the present practice to specify the amount of general damages in the pleadings. As was said by Lord Goddard in *British Transport Commission* v. *Gourley*: (1)

"In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damage which has to be specially pleaded and proved. ....Secondly, there is general damage which the law implies and which is not specially pleaded".

At the time of the accident the plaintiff was and still is a married woman, aged 31 years. The husband works in the Pejabat Telecom at a salary of $620 per month. She has seven children. She used to do household work which consisted of cooking, taking care of the house and family, washing and sewing. In fact she was doing what a normal, happy and healthy housewife would have done. She used to attend parties, visit the cinemas, entertain guests, and visit her mother at Klang. After the accident she no longer does household work because she says she cannot now sit for a long time and whenever she does household work she feels sick. She still complains of pain in the buttock and attacks of headache. She now employs a servant to do the cooking and washing at $50 per month and another servant to do the ironing at $8 per month.

In assessing general damages there are three elements to be considered: (a) pain and suffering; (b) loss of enjoyments of life; (c) prospective pecuniary loss. Under the first head I think a substantial sum should be awarded. The accident occurred on 19th October, 1962. She sustained a fracture of the coccyx. This symptom of coccydynia has proved to be permanent and will incapacitate her in activities like prolonged sitting, riding in a car, and such like activities. Up to the present day she has been treated as an out-patient which consists of heat therapy and the taking of pain killers (analgesics). This symptom may happen any day or every day, depending on the activities of the plaintiff. The pain is brought about by the pressure on the spine. Such pain is confined to the buttock and the area between the thighs. It is therefore clear that the plaintiff must have suffered considerable pain at the time of the accident right up to the present moment and there is a possibility that such pain will remain permanent. I think a sum of $6,000 would not be an excessive award under this head.

Under the second element, the plaintiff was a vigorous, happy and healthy woman of 31 years who has suffered a permanent symptom of coccydynia which will prevent her from indulging in those normal forms of recreation to which she was accustomed. When before she could visit the cinema, attend parties, entertain guests, go for rides in the motor-car, she now can no longer perform with that amount of enthusiasm and zest. When formerly she enjoyed doing household work and looking after her family, she now can no longer perform. I do not think a sum of $3,000 would be excessive under this head.

With regard to prospective pecuniary loss, it was argued by defence counsel that as no special damages were claimed in respect of providing the plaintiff with servants, the plaintiff cannot now successfully use this as an element for awarding damages. For myself, the argument is without substance. As was said by Greer L.J. in *Roach* v. *Yates*: [2]

> "I think that Mr. Beyfus was right in saying that we must take into account, at any rate, for the period during which he must now be expected to live, the sum of £3 per week as the minimum expense which this unfortunate man would have to incur in retaining the services of his wife and his sister-in-law".

In that case the plaintiff's wife and sister-in-law gave up their work (at which they earned £3 a week between them) to look after the plaintiff. The lost wages, at £3 a week, were taken as the minimum expense which attendance on the plaintiff would involve. Again, in *Shearman* v. *Folland*, [3] an old lady had lost a leg and had to have a companion. She claimed 10 guineas as attendance expenses not already incurred as prospective loss under the head of general damages. The Court of Appeal held that she was entitled to claim under that head but reduced the figure as being excessive. Asquith L.J. at p. 981 said:

> "All damages which up to the time of hearing have not yet crystallised in actual disbursement, but are still prospective, are general damages".

In the light of these authorities it is clear that the plaintiff can claim the expense of engaging the servants as a prospective expense which will be capitalised in the same way as loss of earnings.

In cases like the present where a housewife is partially disabled, the claim is usually made by the husband who has a right of action at common law for the loss of his wife's services; see *Brockbank* v. *Whitehaven Junction Railway Company*. [4] If, however, the wife herself, as in this case, accepts responsibility for paying her substitutes, in my opinion there is no reason in principle why she could not include the cost in her own claim without the intervention of her husband.

The cost of employing two servants at $58 a month amounts to $696 a year. But for the accident, the average expectation of life of a Malaysian woman of 30 years, taking the nearest figure, would be 36.76 years. This figure is obtained from the Malaysia Official Year Book, 1963, at page 46. Due to the permanent injury and mental distress which she suffered, her expectation of life would, in my opinion, be reduced by 20 years. On these figures, as a matter of arithmetical calculation, it would come to $10,440. However, I must allow for the various relevant contingencies to which a Malaysian housewife would be subjected. I have to consider the cost of living in this country which has gone up and may go up and which may affect the cost of employing servants in the future. I have also to consider the probability that having regard to the station in life of the plaintiff's husband he may have to provide her with servants at some stage of their family life. Taking these and other contingencies into consideration, I will allow a reduction of 10 per cent. That would amount to $9,400. In all I will allow $18,500 as general damages. There will be the usual order for costs in this case.

Order accordingly.

Solicitors: *Doraiswamy Aiyer & Kok Thoy; Khoo & Sidhu.*